

FILED

2009 DEC 28 AM 10:08

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY hm DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBBIE MARTIN,

Petitioner,

vs.

JAMES A. YATES, Warden,

Respondent.

CASE NO. 08CV2203 BEN (BLM)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Petitioner Robbie Martin, a state prisoner proceeding pro se, petitions for a writ of habeas corpus under 28 U.S.C. § 2254. Dkt. No. 1. Respondent filed an answer. Dkt. No. 8. Petitioner did not file a traverse.¹

On August 27, 2009, the Honorable Magistrate Judge Barbara L. Major issued a Report and Recommendation, recommending that the petition be denied with prejudice. Dkt. No. 13. Any objections to the Report and Recommendation were due September 18, 2009. *Id.* Petitioner did not file any objections or request an extension of time to file objections. For the reasons stated below, the Court ADOPTS the well-reasoned Report and Recommendation of the Magistrate Judge and DENIES WITH PREJUDICE Petitioner's petition.

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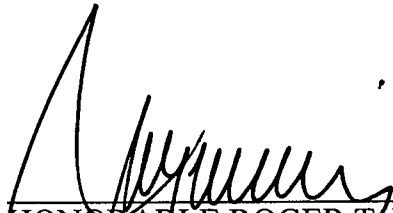
¹The Court notes that Petitioner did not file a traverse despite the Magistrate Judge granting Petitioner a 90-day extension of time in which to file the traverse. Dkt. No. 11.

1 A district judge “may accept, reject, or modify the recommended disposition” of a
2 Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.
3 §636(b)(1). “[T]he district judge must determine de novo any part of the [report and
4 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,
5 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings
6 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
7 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 540 U.S. 900 (2003)
8 (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005).
9 “Neither the Constitution nor the statute requires a district judge to review, de novo, findings
10 and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d
11 at 1121.

12 In the absence of any objections, the Court **ADOPTS** the Report and Recommendation
13 in its entirety and **DENIES WITH PREJUDICE** Petitioner’s petition for writ of habeas
14 corpus. The Clerk shall close the file.

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16 **IT IS SO ORDERED.**

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18 DATED: 12/25/09


19 HONORABLE ROGER T. BENITEZ
20 UNITED STATES DISTRICT JUDGE
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